

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 8/11/04 Item:

File Number
CP03-062

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
West of 264-35-096 (CalTrans right-of-way)

STAFF REPORT

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: North side of Grant Street at the intersection of Palm Street, adjacent to the Highway 280/Highway 87 interchange

Gross Acreage: +/- 0.3

Net Acreage: +/- 0.3

Net Density: N/A

Existing Zoning: RM Multiple
Residence

Existing Use: Vacant CalTrans right-of-way

Proposed Zoning: RM Multiple
Residence

Proposed Use: 60-foot monopole within CalTrans right-of-way for wireless
communications antennas and 920 square foot enclosure for associated equipment

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
Medium Density Residential (8-16 du/ac)

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Highway 280/Highway 87 Interchange

RM Multiple Residence

East: Highway 280 off-ramp with vacant property further east

RM Multiple Residence

South: Single-family detached residential across Grant Street

RM Multiple Residence

West: Guadalupe River & Highway 87

R-2 Two-Family Residence

Completed by: FLB

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on _____
☐ Negative Declaration adopted on _____

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: FLB

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☐ Action
☒ Recommendation

OWNER	APPLICANT	DEVELOPER
State of California Department of Transportation PO Box 23440 MS 11-D Oakland, CA 94623-0440	Linda Spranz Cal Com Systems, Inc. 2001 Omega Road, #100 San Ramon, CA 94583	Verizon Wireless 2785 Mitchell Road Walnut Creek, CA 94598

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: FLB

Department of Public Works

Public Works memorandum is attached.

Other Departments and Agencies

Fire Department, Strong Neighborhoods Initiative Division, California Department of Transportation

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On October 16, 2003, the applicant, Linda Spranz, Cal Com Systems, Inc., submitted a Conditional Use Permit application requesting to install a freestanding monopole 60 feet in height and a 920 square-foot ancillary equipment enclosure on a +/- 0.3 gross acre site in the RM Multiple Residence Zoning District. The subject site is located on the north side of Grant Street at the intersection of Palm Street, adjacent to the Highway 280/Highway 87 interchange. The site, owned by the State of California Department of Transportation, is currently vacant. Pursuant to Table 20-50 of the San José Municipal Code, issuance of a Conditional Use Permit is required for the installation of a wireless communication antenna in the RM Multiple Residence Zoning District.

The subject site is flat and generally triangular in shape. The location of the proposed monopole is on the western side of the property and is located approximately 55 feet north of Grant St. Surrounding uses include the Hwy 87 off-ramp/Interstate 280 on-ramp to the north, an Interstate 280 off-ramp and vacant property to the east, Guadalupe River and Hwy 87 to the west, and residential uses across Grant St. to the south.

In 1996, San José planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

Project Description

The proposed monopole is a tapered design, with a maximum diameter of 20 inches at its base and a maximum diameter of 12 inches at the top 60-foot elevation. Verizon proposes to install three panel

antennas and two GPS antennas onto the highest four feet of the monopole. AT&T proposes to install three additional panel antennas (each 51 inches in height) centered at an elevation of 49 feet on the proposed monopole. The antennas and mounts would add 18 inches to the diameter of the pole, so a 30-inch diameter would be the maximum diameter of the pole and antennas at a height of 60 feet. The base of the monopole is surrounded by a fence enclosure measuring 23 feet by 40 feet. Associated equipment cabinets, a new standby/back-up generator, and an approximately 12-foot by 20-foot equipment shelter are proposed to occupy the remainder of the enclosure area.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposed project is consistent with this section in that the project involves the construction and location of limited numbers of new, small facilities or structures.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential in that wireless communication antennas are considered to be in conformance with General Plan Policies provided that the proposal conforms to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities. The aforementioned policy indicates that wireless communication antennas may be appropriate on properties with residential designations if those properties are developed with non-residential uses. Further discussion in the analysis section below explains why this is an appropriate site that conforms to the Policy.

ANALYSIS

The key issues analyzed for the proposed project are conformance with the following: (1) the City of San José Zoning Ordinance, (2) City Council Policy 6-20 for Wireless Communication Facilities, and (3) the Riparian Corridor Policy Study. Additional issues evaluated as part of Staff's review include noise generated by the proposed equipment and air quality as a result of the proposed generator.

Conformance to the Zoning Ordinance

Table 20-60 of the Zoning Ordinance lists the setbacks for all structures within the RM Multiple Residence Zoning District. The proposed locations for the monopole and associated equipment enclosure meet all applicable minimum setbacks in the table.

Section 20.80.1900 of the Municipal Code regulates height of wireless communication antennas. Section 20.80.1900 (A) states that "the maximum height of a wireless communication antenna may be increased over the required maximum height of the zoning district in which it is located up to a maximum of sixty (60) feet provided that the design of the antenna is a 'slim' pole design." The proposed monopole and associated antenna design is considered a "slim" pole design because it tapers to a maximum diameter of 12 inches at the top. Therefore, the proposed maximum height of 60 feet conforms to the maximum height limitation specified in the Zoning Ordinance.

Conformance to City Council Policy 6-20 for Wireless Communications Facilities

General Plan Conformance

The proposed monopole complies with the intent of the City Council Policy (attached). The policy states that:

Wireless communication antennas which are either freestanding or attached to buildings are discouraged from all residential designations, except Residential Support for the Core, High-Density Residential or Transit Corridor Residential which provide for the integration of commercial and residential uses in an urban setting. Antennas located on residentially designated properties solely developed with nonresidential uses such as parks, schools, public utilities, and churches may be acceptable subject to review in accordance with the City's Zoning Ordinance.

The monopole would be located on an area designated Medium Density Residential on the General Plan Land Use/Transportation Diagram. The subject property is owned by the State of California Department of Transportation and is not developed aside from the Interstate/Highway on-/off-ramps. Given the ownership and the current use, development of the property with a residential use is not anticipated. Because the property is not anticipated for residential development, and because the property would otherwise remain developed only with the Interstate/Highway on-/off-ramps, the subject location would not conflict with the intent of the Policy, which seeks to limit interference between proposed antennas and existing or future residential uses. Approval of this CUP would not be expected to have an impact on the future redevelopment of the area, and Staff feels that the proposed monopole is compatible with the existing use of the site for Interstate and Highway on-/off-ramps. To ensure conformance with future General Plan and Council Policy revisions, a five-year time condition would be included as part of the Conditional Use Permit approval.

Alternatives Analysis

The applicants explored various alternatives to the proposed monopole, and a variety of reasons precluded the use of these alternatives. The geographic area in need of service expansion was the most limiting factor. The area in need of coverage is approximately three city blocks. Coverage already exists in the subject area, however, the demand for service exceeds the supply that can be provided with current facilities. Many alternatives were dismissed due to their proximity to existing sites, with the applicant's radio frequency engineers concluding that these sites would not be technically feasible. A number of other options were precluded due to various types of failures in negotiating space to lease. Staff suggested additional building mounted alternatives, however, the sites did not meet the technical specifications needed by the applicant.

Visual Impacts

In conformance with the policy, the proposed monopole is a "stealth" design, utilizing a smooth tapered monopole design with flush mounted antennas. The proposed monopole would have a maximum diameter of 20 inches at its base and a maximum diameter of 12 inches at the top 60-foot elevation. The antennas and mounts would add 18 inches to the diameter of the pole, so a 30-inch diameter would be the maximum diameter of the pole and antennas at a height of 60 feet. Staff has recommended a condition of approval (and the applicant has agreed) that should the monopole be approved, the applicant will install a pole and antenna array with the smallest diameter that is technically feasible.

Adjacent to the site, Hwy 87 and Interstate 280 are elevated above grade, thereby screening the lower portion of the proposed monopole from view from the north and west. Similarly, existing Redwood and Acacia trees exist nearby with a height of approximately 50 feet. These trees would aid in the visual screening of a large portion of the pole from views from the north, south, and east. To further screen of the equipment enclosure, the applicant is proposing to plant new landscaping including various native riparian shrubs and trees. The new landscaping is focused to the west of the proposed equipment, as this area faces the adjacent Guadalupe River where a future trail is planned. When the trees and shrubs are established, they would provide screening for both the equipment and a portion of the proposed monopole. A proposed automatic irrigation system would be installed for landscaping around the perimeter of the chain-link fence enclosure.

Conformance to the Riparian Corridor Policy Study

Guadalupe River runs to the west of the site. At its closest point, the proposed location of the equipment is approximately 55 feet from the top-of-bank of the Guadalupe River. The applicant provided information from a qualified biologist indicating that no riparian vegetation was located within 100 feet of the project site boundary. As part of a flood control and streambank stabilization project, all vegetation was removed and riprap and cellular concrete turf-grid were installed in the riverbed. No special plant or animal species were observed. Due to the lack of suitable habitat, the biologist concluded there is no potential for occurrences of the California Red-Legged Frog or the California Tiger Salamander. Given the artificial nature of the streambed and the lack of any riparian vegetation, the biologist indicated that proposed construction would have no direct riparian impacts.

The Policy states that a reduced setback may be considered in “locations in or near Downtown San Jose.” The Policy goes on to state that another condition that may warrant reduced setbacks is for “utility or equipment installations, or replacement of existing ones, which involve no significant disturbance to the riparian corridor during construction and operation, and generate only incidental human activity.” If these circumstances are present, a reduced setback may be considered if:

- ? There is no reasonable alternative which avoids or reduces the encroachment into the setback area.
- ? The reduced setback will not significantly reduce or adversely impact the riparian corridor.
- ? Uses are not fundamentally incompatible with riparian habitats.
- ? There is no evidence of streambank erosion or previous attempts to stabilize the streambanks which could be negatively affected by the proposed development.
- ? The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.
- ? A qualified biologist, stream hydrologist, and/or other appropriate professional has confirmed in writing the above conditions.

A qualified biologist has confirmed that the above conditions are present and that the habitat protection objectives called out in the Policy will be met. If the proposed monopole and equipment were to be shifted outside of the 100-foot riparian setback, the removal of existing trees would be required. Given the poor quality of the riparian habitat, Staff believes preservation of the existing trees and encroachment into the 100-foot setback is a better situation than strict adherence to the 100-foot setback with associated tree removals.

A public trail is proposed in the area separating the proposed development from the Guadalupe River. In an effort to screen the proposed equipment and monopole from the future trail, the applicant is proposing to plant native riparian vegetation between the proposed trail and equipment locations. The plant species

were specified by the qualified biologist and include Big Leaf Maples, a Coast Live Oak, and numerous Toyon, Wild Rose, and Coyote Brush shrubs.

Noise Impacts from the Proposed Generator

Table 20-85 of the San José Municipal Code indicates that 55 decibels (dB) is the maximum noise level permissible for a use adjacent to a property used or zoned for residential purposes. Section 20.40.600 (B) (2) of the San José Municipal Code indicates that the maximum sound levels can be exceeded only upon issuance of and in compliance with a Conditional Use Permit.

The applicant submitted manufacturer's noise specifications for the proposed generator (model no. Generac SD060), and those specifications indicated that, with a Series 2000 sound attenuated enclosure, the proposed generator would result in a maximum noise level of 65 dB at a distance of 23 feet. Rather than enclose the proposed generator completely, the applicant is proposing to house the generator in an un-roofed enclosure with sound attenuating foam insulation. Additionally, the applicant would, as a condition of approval, be required to install a hospital grade muffler on the proposed generator. The combination of the foam-lined enclosure and the hospital grade muffler should reduce the noise level to less than that indicated by the manufacturer's specifications.

Given the distance of approximately 100 feet from the nearest residential property line to the south, the noise level from the proposed generator should be well below the maximum of 55 dB at the nearest residential property line. City records show the ambient noise level from the adjacent Highway/Interstate at 75 to 79 dB. At that level, noise from the proposed equipment would be indistinguishable. The properties are also within the airport approach zone, which contributes to additional ambient noise levels that are not part of the road noise calculations. Given the existing conditions and the fact that the proposed generator will only be tested for a maximum of 18 hours per year, the effect on the adjacent residences should be negligible. Any approval would be conditioned to require that the applicant meet the noise performance standards from the Zoning Ordinance.

Air Quality Impacts from the Proposed Generator

In July of 2001, the City of San José commissioned environmental consultants David J. Powers and Associates to conduct a health risk assessment of various diesel standby generators. The significance threshold used as a basis for evaluation was the Bay Area Air Quality Management District (BAAQMD) standard of an increase in cancer health risk due to diesel particulate matter of more than 10 incidents in one million people. The proposed generator (model no. Generac SD060) was not one of the generator models evaluated in the study. However the applicant provided an air quality analysis prepared by a qualified meteorologist that evaluated the proposed generator. Given the minimal testing time of less than 20 hours per year, the meteorologist indicated that the proposal would pose a cancer health risk of less than one case per million. This level is below the minimum threshold for air quality standards set up by BAAQMD, and any approval of the project would be conditioned to require that the applicant receive all appropriate BAAQMD permit approvals.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings, and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The subject site where the monopole and associated equipment enclosure is proposed has a designation of Medium Density Residential on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the RM Multiple Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposed project is consistent with this section in that the project involves the construction and location of limited numbers of new, small facilities or structures.
4. The proposed monopole is a tapered design, with a maximum diameter of 20 inches at its base and a maximum diameter of 12 inches at the top 60-foot elevation. Verizon proposes to install three panel antennas and two GPS antennas onto the highest four feet of the monopole, and AT&T proposes to install three additional panel antennas (each 51 inches in height) centered at an elevation of 49 feet on the proposed monopole. The antennas and mounts would add 18 inches to the diameter of the pole, so a 30-inch diameter would be the maximum diameter of the pole and antennas at a height of 60 feet. The base of the monopole is surrounded by a fence enclosure measuring 23 feet by 40 feet. Associated equipment cabinets, a new standby/back-up generator, and an approximately 12-foot by 20-foot equipment shelter are proposed to occupy the remainder of the enclosure area.
5. The proposed project will not displace any existing parking at the site.
6. The Zoning Ordinance allows wireless antennas to exceed the maximum height allowed in a particular zoning district, up to a maximum of 60 feet, provided that the antennas are of “slim” design. The proposed monopole and associated antenna design is considered a “slim” pole design because the proposed monopole utilizes a smooth-tapered monopole design with flush mounted antennas.
7. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.
8. The proposed monopole complies with the intent of the City Council Policy that states: “Wireless communication antennas which are either freestanding or attached to buildings are discouraged from all residential designations, except Residential Support for the Core, High-Density Residential or Transit Corridor Residential which provide for the integration of commercial and residential uses in an urban setting. Antennas located on residentially designated properties solely developed with nonresidential uses such as parks, schools, public utilities, and churches may be acceptable subject to review in accordance with the City’s Zoning Ordinance.”
9. The monopole would be located on an area designated Medium Density Residential on the General Plan Land Use/Transportation Diagram. The subject property is owned by the State of California Department of Transportation and is not developed aside from the Interstate/Highway on-/off-ramps. Given the ownership and the current use, development of the property with a residential use is not anticipated. Because the property is not anticipated for residential development, and because the property would otherwise remain developed only with the Interstate/Highway on-/off-ramps, the subject location would not conflict with the intent of the Policy, which seeks to limit interference

between proposed antennas and existing or future residential uses. Approval of this CUP would not be expected to have an impact on the future redevelopment of the area, and Staff feels that the proposed monopole is compatible with the existing use of the site for Interstate and Highway on-/off-ramps. To ensure conformance with future General Plan and Council Policy revisions, a five-year time condition would be included as part of the Conditional Use Permit approval.

10. The applicants explored various alternatives to the proposed monopole, and a variety of reasons precluded the use of these alternatives. The geographic area in need of service expansion was the most limiting factor. The area in need of coverage is approximately three city blocks. Coverage already exists in the subject area, however, the demand for service exceeds the supply that can be provided with current facilities. Many alternatives were dismissed due to their proximity to existing sites, with the applicant's radio frequency engineers concluding that these sites would not be technically feasible. A number of other options were precluded due to various types of failures in negotiating space to lease. Staff suggested additional building mounted alternatives, however, the sites did not meet the technical specifications needed by the applicant.
11. In conformance with the policy, the proposed monopole is a "stealth" design, utilizing a smooth tapered monopole design with flush mounted antennas. The proposed monopole would have a maximum diameter of 20 inches at its base and a maximum diameter of 12 inches at the top 60-foot elevation. The antennas and mounts would add 18 inches to the diameter of the pole, so a 30-inch diameter would be the maximum diameter of the pole and antennas at a height of 60 feet. Staff has recommended a condition of approval (and the applicant has agreed) that should the monopole be approved, the applicant will install a pole and antenna array with the smallest diameter that is technically feasible.
12. Adjacent to the site, Hwy 87 and Interstate 280 are elevated above grade, thereby screening the lower portion of the proposed monopole from view from the north and west. Similarly, existing Redwood and Acacia trees exist nearby with a height of approximately 50 feet. These trees would aid in the visual screening of a large portion of the pole from views from the north, south, and east. To further screen of the equipment enclosure, the applicant is proposing to plant new landscaping including various native riparian shrubs and trees. The new landscaping is focused to the west of the proposed equipment, as this area faces the adjacent Guadalupe River where a future trail is planned. When the trees and shrubs are established, they would provide screening for both the equipment and a portion of the proposed monopole. A proposed automatic irrigation system would be installed for landscaping around the perimeter of the chain-link fence enclosure.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities, in that the applicant has provided wireless antennas that are in conformance with the Zoning Ordinance and are of a stealth design.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Bay Area Air Quality Management District (BAAQMD) Permit.** Prior to the installation of the proposed generator, the applicant shall obtain and comply with all applicable BAAQMD permits and shall have those permits available for review by the Planning Divisions upon request.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José -Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José -Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "CalTrans R/W at Palm & Grant, San Jose, CA" for Verizon Wireless and AT&T dated September 15, 2003 and last revised on May 20, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.
4. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Lighting.** This permit allows no new on-site exterior lighting.
7. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
8. **Monopole Design.** The monopole shall be of tapered design, with a maximum diameter of 20 inches at its base and a maximum diameter of 12 inches at the top 60-foot elevation. Three panel antennas and two GPS antennas are approved on the highest four feet of the monopole, and three additional panel antennas are approved to be centered at an elevation of 49 feet on the proposed monopole. The antennas and mounts would add 18 inches to the diameter of the pole, so a 30-inch diameter would be the maximum diameter of the pole and antennas array at a height of 60 feet. If structural reports and technical calculations show that the proposed pole and/or antenna array diameter can be reduced to less than the maximum dimensions specified above, the applicant shall, notwithstanding any other conditions of approval, provide Planning Staff with the new dimensions and install the smaller pole.

9. **Landscaping.** Planting and irrigation are to be provided, as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
10. **Generator Model.** This approval is for the installation of one diesel standby/backup generator. The generator evaluated for this proposal is model no. Generac SD060, and no other generator model shall be installed without separate approval from the Director of Planning, Building, and Code Enforcement.
11. **Operation.** This stand-by/backup electrical power generation facility shall be operated only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator's control.
12. **Generator Testing.** Testing of the proposed generator may occur for a maximum of two (2) hours per month, and all testing shall be done in conjunction with the two existing turbine rooftop generators. Testing of emergency power equipment shall be limited to weekdays between the hours of 9:00 a.m. to 5:00 p.m.
13. **Non-Resettable Meters.** This power generation facility shall be equipped with either:
 - a. A non-resettable totalizing meter that records hours of operation, or
 - b. A non-resettable fuel usage meter (3,956 gallons of fuel are equivalent to 100 hours of operation).
14. **Record of Operation.** The applicant shall maintain an accurate record of operation of the generator to the satisfaction of the Director of Planning, Building, and Code Enforcement of the City of San Jose and the appropriate local, State, and Federal agencies. These records should cover at least the following items:
 - a. Hours of operation and testing.
 - b. Operational problems, complaints, and difficulties.
 - c. A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.
 - d. Dust and litter control efforts and results.
 - e. Description of materials received, identified by source and material.
 - f. The records shall be open to inspection by the City of San José and other duly authorized regulatory and enforcement agencies during normal business hours
15. **CARB-Certified Ultra Low Sulfur Fuel.** Applicant shall use CARB-certified ultra low sulfur diesel fuel (15 ppm) to operate stand-by/backup electrical power generation facilities (generators).

16. **Muffler.** The applicant is to install a hospital grade muffler on the proposed generator.
17. **Generator Enclosure.** The proposed generator shall be enclosed on all sides by sound attenuating walls with foam lining. The enclosure may be un-roofed.
18. **Noise.** All proposed equipment is to meet City performance standards called out in the Zoning Ordinance.
19. **Compliance With Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
20. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
21. **Colors and Materials.** All colors and materials are to be as specified on the approved plan set. The monopole itself is to be painted a light color (either white or light blue) so as to help the top, more visible portion of the pole, blend with the sky.
22. **Fire Department Comments.** The applicant is to comply with all Fire Department comments at the plan review stage.
23. **Hazardous Materials.** The applicant shall obtain all necessary Hazardous Materials Permits and clearances from the City of San José Hazardous Materials Division (408-277-4659).
24. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP03-062, shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms to all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
25. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

26. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
27. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit. Co-location of new providers can be accomplished through issuance of a Permit Adjustment approved by the Director of Planning, Building, and Code Enforcement, as long as the antennas are located on the approved pole or on one of the same or smaller dimensions. No expansion of the pole or exterior mounting of antennas is permitted without the approval of a Conditional Use Permit Amendment. Any changes are subject to the discretion of the Director of Planning, Building, and Code Enforcement.
28. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use, or the permit has expired.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to one year, provided that no more than two (2) such term extensions may be approved. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the wireless communications antenna is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this conditional use permit has been granted for a period of five (5) years only.

You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

c: Linda Spranz, Cal Com Systems, Inc., 2001 Omega Rd. #201, San Ramon, CA 94583

FLB